IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 26TH MARCH 2007 / 5TH CHAITHRA 1929

OP.No. 14950 of 1998(D)

PETITIONER:

1. THE PRESIDENT, THE PONNANI SERVICE CO-OP. BANK LTD., NO.4841, PONNANI P.O., MALAPPURAM DIST.

2. THE PONNANI SERVICE CO-OP. BANK LTD. NO. 4841, PONNANI P.O, MALAPPURAM DTD. REP. BY ITS SECRETARY.

BY ADV. SRI.PIRAPPANCODE V.SREEDHARAN NAIR
SRI.S.P.ARAVINDAKSHAN PILLAY
SRI.PIRAPPANCODE V.S.SUDHIR
SRI.V.VARGHESE

RESPONDENTS:

1. THE LABOUR COURT, KOZHIKODE.

2. P.VASU, PATHIRATH HOUSE, KADAVANADU P.O., VIA.PONNANI, MALAPPURAM DIST.

BY GOVERNMENT PLEADER SHRI.RAVIKRISHNAN.
SRI.T.SETHUMADHAVAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 26/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.No.14950/98.

APPENDIX

PETITIONER'S EXHIBITS:

P1. COPY OF THE CLAIM STATEMENT DTD.18.6.94.

P2. COPY OF THE WRITTEN STATEMENT BEFORE R1.

P3. COPY OF THE REJOINDER

P4. COPY OF THE AWARD IN THE KERALA GAZETTE.

P5. COPY OF THE ORDER NO.C.RP.NO.664596 DTD.18.11.96.

P6. COPY OF THE G.O.(RT).nO.170/98/CO-OP. DTD.30.4.98.

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P.A. to Judge.

S.SIRI JAGAN, J.

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O.P.No.14950 of 1998

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Dated this the 26th day of March, 2007

J U D G M E N T

The management in I.D.No.40/194 on the files of the Labour Court, Kozhikode is the petitioner in this original petition. The petitioner is challenging Ext.P4 award in that I.D. The issue referred for adjudication was regarding the validity of the dismissal of the 2nd respondent workman by the management. The workman was dismissed from service after a domestic enquiry into certain allegations of misconduct. Therefore, the Labour Court first considered the question as to whether the domestic enquiry conducted against the workman was valid and proper. The Labour Court found that the domestic enquiry was conducted in compliance with the principles of natural justice. However, the Labour Court found that out of the five charges only part of one charge alone was proved. Thereafter exercising the powers under Section 11A of the I.D. Act, the Labour Court

interfered with the punishment setting aside the dismissal and substituting the punishment of dismissal with the punishment of withholding of 12 months' salary from the date of dismissal and the management was directed to reinstate the petitioner in service within one month from the publication of the award with all other attendant benefits including continuity of service and backwages excluding the amount ordered to be with-held. That award is under challenge in this original petition.

2. The management challenges the award on two grounds. The first is that the charge proved against the workman itself is grave enough to warrant the punishment of dismissal from service and therefore the Labour Court misdirected itself in interfering with the punishment imposed by the management. The second is that in so far as the employees of the co-operative societies are concerned, their service conditions are governed by the Kerala Co-operative Societies Rules, Rule 198 of which stipulates the punishments which can be

imposed on an employee of a co-operative society. Since the punishment of withholding of 12 months' salary is not a punishment enumerated in Section 198, the Labour Court could not have imposed that punishment.

3. The management also relies on the decisions of the Supreme Court in *Divisional Controller, N.E.K.R.T.C. v. H.Amaresh* [(2006) 6 SCC 187], *U.P.SRTC v. Mitthu Singh* [(2006) 7 SCC 180] and *A.P.SRTC v. Raghuda Siva Sankar Prasad* [(2007) 1 SCC 222) regarding the circumstances under which the Labour Court can interfere with the punishment imposed by the management.

4. The learned counsel for the 2nd respondent workman stoutly opposes the contentions of the management. He would submit that the entire charges were fabricated charges with the sole object of victimising the workman. He would submit that the whole incident started because of a difference of opinion between the Secretary of the Society and the 2nd respondent -workman in the matter of

conducting Onam fair. He would further submit that the very fact that in respect of all other charges the workman was found not guilty itself would speak volumes about the animosity which the Secretary had against the workman which alone led to the disciplinary proceedings. He would further submit that in any event, the only charge which has been found proved also is not grave enough to warrant the punishment of dismissal from service. He would also submit that being a Peon in a society, that too, a member of scheduled caste, he is certainly entitled to leniency in punishment, especially since the misconduct found to have been proved against him itself is a charge, the genuineness of which is considerably in doubt because of the fact that the Labour Court had in fact found all other charges as not proved. He also relies on the decision of the Supreme Court in *Om Kumar v. Union of India* [(2001) 2 SCC 386) regarding the powers of this court to interfere with the awards of the Labour Court/Industrial Tribunal with regard to

interference with the discretion exercised by the Labour Court/Tribunal under Section 11A of the Industrial Disputes Act in the matter of interference with the punishment imposed by the management.

5. I have considered the rival contentions in detail.

6. Since my decision on the subject has to necessarily depend on the gravity of the misconduct which has been proved to have been committed by the 2nd respondent, I have to necessarily look at that charge first. The findings in that regard are contained in paragraph 14 of Ext.P4 award, which reads thus:

> "14. As regards the second count of the third charge i.e. the workman took Rs.250 from one Sri K.P.Rajan to open a Savings Bank Account in the bank, but neither opened the account nor returned the amount, PW4 Sri.K.P.Rajan testified before the Enquiry Officer regarding the entrustment of the amount. Nothing was brought out during his cross-examination to discredit his evidence or to show that he has any enmity towards the workman. Therefore, the Enquiry Officer is justified in believing his evidence and coming to the conclusion that the second count in the third charges is proved."

Now the only question that remains to be considered

in this case is as to whether this misconduct qualifies for imposition of the extreme punishment of dismissal from service, since the 2nd respondent workman has not chosen to challenge the finding on this charge which has become final. In *H.Amaresh's case* (supra) the Supreme Court was dealing with the case of a conductor who misappropriated an amount of Rs.360.95. In that case, the Supreme Court relied on several other decisions of the Supreme Court itself, of course all of which are in relation to misconducts and dishonesty committed by bus conductors. The Supreme Court in *Regional Manager, RSRTC v. Ghanshyam Sharma* [(2002) 10 SCC 330) held that in cases of proved acts of misconduct either of dishonesty or of gross negligence by bus conductors who by their actions and inactions cause financial loss to the Corporation, they ought not to be retained in service. The second case referred to is of the Supreme Court in *Karnataka SRTC v. B.S.Hullikatti* [(2001) 2 SCC 574] in which the Supreme Court has

held as follows:-

> '15. This court in *Hullikatti* (2 Judges) has held in para 6 as follows: (SCC p.576).
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> > "6. It is misplaced sympathy by the Labour Courts in such cases when on checking it is found that the bus conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the bus conductors to collect the correct fare from the passengers and deposit the same with the company. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare."'

The Supreme Court has in paragraph 18 of the H.Ameresh's case (supra) held that when a employee is found guilty of pilferage or of misappropriating the Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering with the quantum of punishment in such cases is not warranted. In paragraph 21 of the decision in *Divisional Controller, KSRTC (NWKRTC) v. A.T.Mane* [(2005) 3 SCC 254) the Supreme Court held as follows:

> '21. Coming to the question of quantum of punishment, this Court in *Divisional Controller, KSRTC (NWKRTC) v. A.T.Mane*, has held as under: (SCC p.259, para 12)
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> > "12. Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment; on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating the corporation's funds, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal."'

7. The decision in *U.P.SRTC's case* (supra) relates to the circumstances under which the Labour Court can interfere with the findings of fact entered into by the enquiry officer in the domestic enquiry. I do not think that, that would be relevant for the purpose of this case, in so far as the Labour Court has jurisdiction to reappreciate the evidence of the domestic enquiry and come to a conclusion of its own on merits only exception being that such conclusion should not be perverse. In this case, I have gone through the discussion of evidence by the Labour Court into the charges of misconduct and I could not find anything perverse about the findings entered into by the Labour

Court. As such, this decision is not of any use to the petitioner. In *Raghuda Siva Sankar Prasad's case* (supra) in paragraph 22, the Supreme Court has held as follows:

> "22. It is also not open to the tribunal and courts to substitute their subjective opinion in place of the one arrived at the domestic tribunal. In the instant case, the opinion arrived at by the Corporation was rightly accepted by the Tribunal but not by the Court. We, therefore, hold that the order of reinstatement passed by the Single Judge and the Division Bench of the High Court is contrary to the law on the basis of a catena of decisions of this Court. In such cases, there is no place for generosity or sympathy on the part of the judicial forums for interfering with the quantum of punishment of removal which cannot be justified. Similarly, the High Court can modify the punishment in exercise of its jurisdiction under Article 226 of the Constitution only when it finds that the punishment imposed is shockingly disproportionate to the charges proved."

8. In the light of the above decisions, what remains is only to consider whether the Labour Court was right in exercising its discretion under Section 11A to interfere with the punishment. The 2nd respondent workman is a Peon in a co-operative bank. It is common knowledge that a primary co-operative bank would have dealings with the District co-operative Banks with regard to transactions of money on a daily basis. Payment of

money from the petitioner bank to the District Co-operative Bank would naturally be natural through the Peons. Therefore, the bank has to always trust its peons with money. In such circumstances, unlike the peons in other establishments, confidence and trust of the bank on the peons is imperative if the bank has to transact its financial business properly. The seriousness of the 2nd respondent's misconduct has to be viewed in that background. What has been proved is that the 2nd respondent workman took Rs.250/- from one Sri.K.P.Rajan promising him that since the concerned clerk is absent, he would open a savings bank account in his name, but he neither opened the account nor returned the amount to Shri.K.P.Rajan. The Labour Court came to the finding that the evidence of Shri.K.P.Rajan could not be discredited in cross examination by the 2nd respondent and he could not also show that the said Sri.K.P.Rajan had any animosity towards the workman. In the above circumstances, I am of opinion that interference by

the Labour Court on the punishment imposed by the management could not be justified under Section 11A since the punishment cannot be stated to be shockingly disproportionate so as to enable the Labour Court to interfere with the punishment imposed on the 2nd respondent by the management. I do not think that the decision of *Om Kumar's case* (supra) relied upon by the counsel for the 2nd respondent is of any assistance to him. Of course, the Supreme Court in that decision laid down that if no relevant fact was omitted nor any irrelevant fact was taken into account nor any illegality was committed by the authority nor the punishment awarded was shockingly disproportionate, no interference is called for. The very decision makes it clear that the Labour Court itself can interfere with the punishment imposed on the workman by the management only if the punishment awarded is shockingly disproportionate. As I have already mentioned, in this case the misconduct found to have been proved against the 2nd respondent workman

is certainly one of misappropriation. When a person who has to be trusted with money on a daily basis, is found to be inclined to commit such misconduct, I am certainly of opinion that the management cannot be expected to place confidence on the workman in future transactions as well. That being so, I am not at all satisfied that the punishment of dismissal imposed by the management on the 2nd respondent workmen was shockingly disproportionate enough for the Labour Court to interfere with the same in exercise of its discretion under Section 11A of the Industrial Dispute Act.

9. Further, as contended by the petitioner, the Labour court could not have imposed a punishment which is not statutorily prescribed under the Kerala Co-operative Societies Rules, in which under Rule 198 the punishment which can be imposed on co-operative employee is statutorily fixed. When there are such rules or standing orders, the Labour Court cannot ignore such Rules or standing orders to impose a punishment which is

not prescribed in the Rules or standing orders. Therefore, the punishment of withholding of 12 months' salary from the date of dismissal substituted by the Labour Court in the place of dismissal is certainly without jurisdiction in so far as the Rules do not permit imposition of such punishment. For this reason also, I am inclined to set aside Ext.P4 award to the extent the Labour Court interferes with the punishment of dismissal imposed on the 2nd respondent workman. Accordingly, I set aside Ext.P4 to the extent of interference by the Labour Court with the punishment imposed by the management. I further declare that in the industrial dispute the workman is not entitled to any relief. Accordingly, the original petition is allowed as above.

Interlocutory applications stand closed.

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S.SIRI JAGAN, J.

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O.P.No.14950 of 1998

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J U D G M E N T

26th March, 2007